

and the portion of the dividend that represents income derived from other foreign countries and possessions of the United States. For purposes of section 853(b)(2) and § 1.853-2(b), the amount that a shareholder may treat as the shareholder's proportionate share of foreign taxes paid and the amount to be included as gross income derived from any foreign country that is attributable to a period during which section 901(j) applies to such country or gross income from sources within other foreign countries or possessions of the United States shall not exceed the amount so designated by the regulated investment company in such written notice. If, however, the amount designated by the regulated investment company in the notice exceeds the shareholder's proper proportionate share of foreign taxes or gross income from sources within foreign countries or possessions of the United States, the shareholder is limited to the amount correctly ascertained.

(b) *Shareholder of record custodian of certain unit investment trusts.* In any case where a notice is mailed pursuant to paragraph (a) of this section by a regulated investment company with respect to a taxable year of the regulated investment company ending after December 8, 1970 to a shareholder of record who is a nominee acting as a custodian of a unit investment trust described in section 851(f)(1) and paragraph (b) of § 1.851-7, the nominee shall furnish each holder of an interest in such trust with a written notice mailed on or before the 70th day following the close of the regulated investment company's taxable year. The notice shall designate the holder's proportionate share of the amounts of creditable foreign taxes paid to foreign countries or possessions of the United States and the holder's proportionate share of the dividend that represents income derived from sources within each country that is attributable to a period during which section 901(j) applies to such country, if any, and the holder's proportionate share of the dividend that represents income derived from other foreign countries or possessions of the United States shown on the notice received by the nominee pursuant to paragraph (a) of this section. This

paragraph shall not apply if the regulated investment company agrees with the nominee to satisfy the notice requirements of paragraph (a) of this section with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and not later than 45 days following the close of the company's taxable year, files with the Internal Revenue Service office where such company's return for the taxable year is to be filed, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 60-day period: *Provided however*, if the regulated investment company fails or is unable to satisfy the requirements of this paragraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 60 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this paragraph within 30 days of such notice.

(c) *Effective/applicability date.* This section is applicable for RIC taxable years ending on or after December 31, 2007. Notwithstanding the preceding sentence, for a taxable year that ends on or after December 31, 2007, and begins before August 24, 2007, a taxpayer may rely on this section as it was in effect on August 23, 2007.

[T.D. 7187, 37 FR 13257, July 6, 1972, as amended by T.D. 9357, 72 FR 48554, Aug. 24, 2007]

§ 1.853-4 Manner of making election.

(a) *General rule.* To make an election under section 853 for a taxable year, a regulated investment company must file a statement of election as part of its Federal income tax return for the taxable year. The statement of election

must state that the regulated investment company elects the application of section 853 for the taxable year and agrees to provide the information required by paragraph (c) of this section.

(b) *Irrevocability of the election.* The election shall be made with respect to all foreign taxes described in paragraph (c)(2) of this section, and must be made not later than the time prescribed for filing the return (including extensions). This election, if made, shall be irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies.

(c) *Required information.* A regulated investment company making an election under section 853 must provide the following information:

(1) The total amount of taxable income received in the taxable year from sources within foreign countries and possessions of the United States and the amount of taxable income received in the taxable year from sources within each such foreign country or possession.

(2) The total amount of income, war profits, or excess profits taxes (described in section 901(b)(1)) to which the election applies that were paid in the taxable year to such foreign countries or possessions and the amount of such taxes paid to each such foreign country or possession.

(3) The amount of income, war profits, or excess profits taxes paid during the taxable year to which the election does not apply by reason of any provision of the Internal Revenue Code other than section 853(b), including, but not limited to, section 901(j), section 901(k), or section 901(l).

(4) The date, form, and contents of the notice to its shareholders.

(5) The proportionate share of creditable foreign taxes paid to each such foreign country or possession during the taxable year and foreign income received from sources within each such foreign country or possession during the taxable year attributable to one share of stock of the regulated investment company.

(d) *Time and manner of providing information.* The information specified in paragraph (c) of this section must be provided at the time and in the manner

prescribed by the Commissioner and, unless otherwise prescribed, must be provided on or with a modified Form 1118 “Foreign Tax Credit—Corporations” filed as part of the RIC’s timely filed Federal income tax return for the taxable year.

(e) *Effective/applicability date.* This section is applicable for RIC taxable years ending on or after December 31, 2007. Notwithstanding the preceding sentence, for a taxable year that ends on or after December 31, 2007, and begins before August 24, 2007, a taxpayer may rely on this section as it was in effect on August 23, 2007.

[T.D. 9357, 72 FR 48554, Aug. 24, 2007]

§ 1.854-1 Limitations applicable to dividends received from regulated investment company.

(a) *In general.* Section 854 provides special limitations applicable to dividends received from a regulated investment company for purposes of the exclusion under section 116 for dividends received by individuals, the deduction under section 243 for dividends received by corporations, and, in the case of dividends received by individuals before January 1, 1965, the credit under section 34.

(b) *Capital gain dividend.* Under the provisions of section 854(a) a capital gain dividend as defined in section 852(b)(3) and paragraph (c) of § 1.852-4 shall not be considered a dividend for purposes of the exclusion under section 116, the deduction under section 243, and, in the case of taxable years ending before January 1, 1965, the credit under section 34.

(c) *Rule for dividends other than capital gain dividends.* (1) Section 854(b)(1) limits the amount that may be treated as a dividend (other than a capital gain dividend) by the shareholder of a regulated investment company, for the purposes of the credit, exclusion, and deduction specified in paragraph (b) of this section, where the investment company receives substantial amounts of income (such as interest, etc.) from sources other than dividends from domestic corporations, which dividends qualify for the exclusion under section 116.

(2) Where the “aggregate dividends received” (as defined in section